



Mike DeWine, Governor  
Jon Husted, Lt. Governor  
Laurie A. Stevenson, Director

March 3, 2021

Re: **Emerald BioEnergy, LLC**  
**Notice of Violation (NOV)**  
**NOV**  
**NPDES**  
**Morrow County**  
**4IN00204**

Ms. Cari Oberfield  
Emerald BioEnergy, LLC  
P.O. Box 249  
Delaware, OH 43015

**Subject: 3rd Notice of Violation**

Dear Ms. Oberfield:

Ohio EPA, Division of Surface Water (DSW) performed an inspection of the Emerald BioEnergy facility on March 2, 2021. The goal of this inspection was to observe the pond levels to evaluate your response to the 2<sup>nd</sup> Notice of Violation (NOV) issued on February 2, 2021, for exceeding the approved Maximum Design Level (MDL) for storage pond 7, and to determine your facility's compliance with Ohio's environmental laws and regulations. The initial NOV for exceeding the ponds levels was issued on March 18, 2020.

During this inspection, it was determined that your plan for lowering the pond levels to return to compliance that was submitted in response to the previous NOVs was not being followed. Visual inspection showed that four ponds were above MDL, three of which were in imminent danger of breaching the pond berm. As per our earlier conversations, it is my understanding that Renergy has been actively evaluating potential strategies to address the manner in a timely manner.

**Violations**

Ohio EPA observed the following violations of Ohio's environmental laws and regulations, Emerald BioEnergy's NPDES permit terms and conditions, and PTI 1244865. Ohio EPA DSW recommends you promptly address these violations.

Please pay special attention to the **Violation Description** and **Requested Action** associated with the violations listed below as they describe what exactly is in violation and the requested action to address each violation.

1. **Ohio Revised Code (ORC) 6111.07(A)**: No person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection pursuant to those sections. Each day of violation is a separate offense.

**Ohio Administrative Code (OAC) 3745-40-10(A)(1)**: Facility storage of biosolids shall be provided by the permittee in a manner that is protective of human health and the environment, and that does not impact surface waters of the state.

**NPDES 4IN00204, Part II. B:** All disposal, use, storage, or treatment of sewage sludge by the Permittee shall comply with ORC 6111, OAC 3745-40, any further requirements specified in this NPDES permit, and any other actions of the Director that pertain to the disposal, use, storage, or treatment of sewage sludge by the Permittee.

**NPDES 4IN00204, Part III. 14:** DUTY TO MITIGATE - The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

**Permit-to-Install (PTI) 1244865:** The approved PTI plans list the MDL, i.e., freeboard, for the Emerald storage ponds. The approved freeboards are 1 foot for ponds 2, 3, 4, 5, 7 and 2 feet for pond 1.

- (a) **Violation Description:** On March 2, 2021, visual inspection showed the levels of ponds 1, 5, and 7 to be at the top of the berms and in danger of breaching and the level of pond 2 to be above MDL. See enclosed pictures.
- (b) **Additional Information:** During the inspection, material was being removed from Pond 2 and taken to the Steamtown ponds. This is not a long term solution as this material may upset the biology at Steamtown and Steamtown does not have the capacity to take enough material to lower the Emerald pond levels below MDL. The response to the 2<sup>nd</sup> NOV requested authorization to irrigate from Pond 7 to lower the system-wide storage capacity before the required PTI and Land Application Management Plan (LAMP) applications are submitted. Ohio EPA cannot authorize irrigation from an unapproved system. Furthermore, due to wet conditions, traditional land application will not be an option for lowering the pond levels to prevent possible overflow.
- (c) **Requested Action:** Develop a plan to address the lawful removal/management of the material from Ponds 1, 2, 5, and 7 to bring the ponds below the approved MDLs. The approved MDLs shall always be maintained. Provide documentation to Ohio EPA that include the amount of material removed from each pond, the manner in which the removed material is being stored or managed including location, the pond levels, and photographs of each pond demonstrating MDLs have been achieved.

2. **ORC 6111.07(A):** See above.

**NPDES 4IN00204, Part II. B:** See above.

**NPDES 4IN00204, Part III. 9.** DUTY TO PROVIDE INFORMATION - The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating the permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

- (a) **Violation Description:** The requested action in the 2<sup>nd</sup> NOV issued on February 2, 2021, required all pond levels to be submitted to Ohio EPA each Friday until the permit renewal becomes effective. Pond levels have not been submitted to Ohio EPA since January 26, 2021.
- (b) **Additional Information:** The requested action in the 1<sup>st</sup> NOV issued on March 18, 2020, also requested that pond levels be submitted to Ohio EPA every Friday. Ohio EPA has had to prompt Renergy to submit this information on several occasions after reports were

not submitted for several weeks in a row. For example, after not receiving pond levels since November 23, 2020, Ohio EPA sent an email on January 4, 2021, requesting the levels. Levels were then provided by Renergy on January 5, 2021.

- (c) **Requested Action:** Provide daily reports to Ohio EPA that include the amount of material removed from each pond, NPDES facility receiving the material, all pond levels, and photographs of each pond until Ohio EPA notifies you that the daily reporting may be concluded and a new reporting timeframe is established.

### **Conclusion**

**No later than March 4, 2021**, submit a plan outlining the measures that will implemented to resolve the violation. **No later than March 12, 2021**, all pond levels shall be below MDL and documentation submitted to Ohio EPA. Ohio EPA is performing further review of inspection findings and subsequent violations or requests for information may be issued.

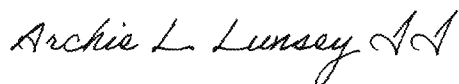
Requested documentation may be submitted electronically to [betsy.sheerin@epa.ohio.gov](mailto:betsy.sheerin@epa.ohio.gov). If circumstances delay resolution of this violation, Emerald BioEnergy is requested to contact Ohio EPA to discuss the situation and propose an alternative schedule to resolve the violation in a timely manner. Additionally, if Renergy believes that the COVID-19 State of Emergency directly prevented or negatively impacted efforts to comply, please include detailed documentation of efforts to comply and any mitigation steps taken to minimize any negative impacts to public health or the environment of noncompliance and include in the compliance plan the impact of the COVID-19 State of Emergency on current-efforts to comply.

Failure to comply with Chapter 6111.07 of the ORC and rules promulgated thereunder may result in an administrative or civil penalty.

Please note that the submission of any requested information to respond to this letter does not constitute waiver of the Ohio EPA's authority to seek administrative or civil penalties as provided in Section 6111.09 of the ORC.

Should you have any questions, please contact Betsy Sheerin at [betsy.sheerin@epa.ohio.gov](mailto:betsy.sheerin@epa.ohio.gov) or 614-644-2150.

Sincerely,



Archie L. Lunsey II  
Assistant Environmental Administrator  
Ohio EPA Division of Surface Water

Enclosures

ec: Cari Oberfield, Renergy  
Erin Sherer, Ohio EPA DSW/CO  
Archie Lunsey, Ohio EPA DSW/CO  
Scott Sheerin, Ohio EPA DSW/CO



Pond 1 North Side



Pond 1 Northeast Corner



Pond 1 East Side



Pond 1 South Side



Pond 2 East Side



Pond 5 North Side





Pond 5 Facing West



Pond 7 East Side near hog barn



Pond 7 North Side